

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PETER PETSCHKE,

Defendant.

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CRIMINAL ACTION NO. 4:13-CR-147

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Now before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on July 5, 2019, to determine whether Defendant violated his supervised release. Defendant was represented by Brian O'Shea. The Government was represented by Ernest Gonzalez.

Peter Petsche was sentenced on July 31, 2014, before The Honorable Marcia A. Crone of the Eastern District of Texas after pleading guilty to the offense of Felon in Possession of Firearms, a Class C felony. This offense carried a statutory maximum imprisonment term of 10 years. The guideline imprisonment range, based on a total offense level of 21 and a criminal history category of IV, was 57 to 71 months. Peter Petsche was subsequently sentenced to 64 months imprisonment followed by a 3-year term of supervised release subject to the standard conditions of release, plus special conditions to include financial disclosure, participation in drug treatment and testing, and a \$100 special assessment fee. On July 30, 2018, Peter Petsche completed his period of imprisonment and began service of the supervision term.

On June 19, 2019, the U.S. Probation Officer executed a Petition for Warrant or Summons for Offender Under Supervision [Dkt. 53, Sealed]. The Petition asserted that Defendant violated four (4) conditions of supervision, as follows: (1) The defendant shall not commit another federal, state, or local crime; (2) The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance; (3) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; and (4) [The defendant] shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation office, until such time as the defendant is released from the program by the probation officer.

The Petition alleges that Defendant committed the following acts: (1) On January 25, 2019, the defendant was arrested by the Lone Oak, Texas, Police Department for Possession of a Controlled Substance Penalty Group 1<1 Gram - Heroin, and Possession of Drug Paraphernalia. On January 26, 2019, the defendant was released on a \$20,000 bond and conditions of bond supervision through the 345th Judicial District Court of Hunt County, Texas. On May 31, 2019, the defendant was arrested on a warrant out of Hunt County for violating the conditions of his bond supervision. On June 10, 2019, the defendant was released on a \$30,000 bond and conditions of bond supervision. On March 8, 2019, the defendant was arrested by the Denison, Texas, Police Department for Public Intoxication. He was released that same day on a personal recognizance bond and ordered to appear in Denison Municipal Court in Denison, Texas, on March 29, 2019. On March 29, 2019, the defendant paid a \$200 fine to the City of Denison; (2), (3), On December 18, 2018, the defendant submitted a urine specimen at the U.S. Probation Office in Plano, Texas,

that tested positive for opiates and marijuana. The specimen was sent to Alere Toxicology for testing and it was confirmed positive for marijuana, Codeine, and Morphine and was also diluted. On December 28, 2018, the defendant submitted a urine specimen at On-Scene Drug Screens in Sherman, Texas, that tested positive for Opiates. The specimen was sent to Alere Toxicology for testing, and it came back positive for Codeine and Morphine and was also diluted. On May 15, 2019, the defendant submitted a urine specimen that tested positive for marijuana. The defendant admitted that he used marijuana. On May 16, 2019, the defendant gave a written admission to his bond supervision officer in Hunt County, Texas, that he used marijuana on April 20, 2019; and (4) On December 14, 2018, and December 17, 2018, the defendant failed to submit to random drug testing as directed. On March 1, and March 8, 2019, the defendant failed to show for his counseling appointments at Texoma Counseling Associates.

Prior to the Government putting on its case, Defendant entered a plea of true to allegations 2, 3 and 4 of the Petition. Having considered the Petition and the plea of true to all allegations, with the exception of allegation 1 which the Government requested to dismiss at hearing, the Court finds that Defendant did violate his conditions of supervised release.

Defendant waived his right to allocute before the District Judge and his right to object to the report and recommendation of this Court.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant's supervised release be revoked and that he be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twelve months and one day, to run consecutively to any term of imprisonment imposed by any state court related to allegation 1, with a term of supervised release of twelve months to follow.

The Court further recommends the imposition of the following special condition: You must participate in an inpatient program of testing and treatment for substance abuse and follow the rules and regulations of that program until discharged. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. You must pay any cost associated with treatment and testing.

The Court also recommends that Defendant be housed in the Bureau of Prisons facility in FCI Fort Worth, if appropriate.

SIGNED this 9th day of July, 2019.

A handwritten signature in black ink, appearing to read 'C.A. Nowak', is written over a horizontal line.

Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE